Supreme Court, U.S.
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No. 90-1119

In The

Supreme Court of the United States

October Term, 1990

ROLAND A. LEBLANC,

Petitioner,

v.

RAYTHEON COMPANY, INC. and UNITED STATES OF AMERICA,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

SUPPLEMENTAL BRIEF

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Counsel for Roland A. LeBlanc ("LeBlanc") files this Supplemental Brief to inform this Court that:

1. The decision of the Court of Appeals which is the object of LeBlanc's Petition for Writ of Certiorari has been published. The citation is *United States ex rel. LeBlanc v. Raytheon Company, Inc.*, 913 F.2d 17 (1st Cir. 1990).

2. We have just learned that in a brief in a pending appeal in the Court of Appeals for the Eleventh Circuit, which was served on January 8, 1991, the Department of Justice, contrary to the construction of the statute by the First Circuit in the present case, concedes that "the Court [of Appeals in the *LeBlanc* case] did not have to reach the 'original source' issue unless it first found that the action was based on a 'public disclosure. . . .' " *United States of America v. Mark S. Stern, et al.*, No. 90-3556, Brief for the United States, p. 10. (A copy of page 10 of the brief of the Department of Justice is attached as Appendix A to this Supplemental Brief. A complete copy of the brief has been lodged with the Clerk of the Court.) Thus within the government, as well as among the courts, the bar and potential qui tam plaintiffs, there is substantial confusion

and conflict concerning the meaning of the jurisdictional provisions of the False Claims Act.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 90-3556

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK S. STERN and
MARK S. STERN, P.A.,

Defendants.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

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Department of Defense employee, attempted to use the fruits of a government investigation to bring a qui tam action. The district court dismissed the action, holding that 31 U.S.C. § 3730(e)(4) barred government employees from bringing qui tam actions. *United States ex rel. LeBlanc v. Raytheon Company,* 729 F. Supp. 170, 177 (D. Mass. 1990). The First Circuit, while qualifying the district court's holding that government employees in general may not bring qui tam actions, nevertheless affirmed the holding that the particular government employee present there could not bring a qui tam action because (a) the information the government employee acquired was the result of a government "hearing, investigation, or audit . . . " and (b) the relator was not an "original source" within the exception to section 3730(e)(4) because it was the employee's "responsibility, a condition of his employment, to uncover fraud" and thus "[t]he fruits of his effort belong to his employer – the government." *United States ex rel. LeBlanc v. Raytheon Company,* 913 F.2d at 20. Since, under the statute, the Court did not have to reach the "original source" issue unless it first found that the action was based on a "public disclosure," inherent in the court's holding is a conclusion that a government employee's use of government material that falls within the scope of his employment constitutes a "public disclosure" within the meaning of the statute.[3]

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[3] Both Appellant and NTEU place heavy reliance on the First Circuit's opinion in *United States ex. rel. LeBlanc v. Raytheon,*

(continued . . .)